

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT T. ROTH

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Appeal No. 1998-0746  
Application No. 08/511,268

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HEARD: April 7, 2000

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Before HAIRSTON, LALL, and GROSS, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 15 through 35.

The disclosed invention relates to an arrangement of a numeric keypad in first and second immediately adjacent straight parallel rows of five keys each in clockwise

Appeal No. 1998-0746  
Application No. 08/511,268

ascending order of the numeric keys. No other actuable keys are located between the parallel rows of numeric keys.

Claim 15 is illustrative of the claimed invention, and it reads as follows:

15. A keypad for facilitating efficient entry of numeric data, said keypad comprising:

a plurality of actuable keys, at least some of which are numeric keys wherein an associated numeral unique to each numeric key is affixed to or adjacent that key, each numeric key having a predetermined length along a first dimension of said keypad;

said numeric keys being arranged in first and second immediately adjacent straight parallel rows of five keys each in clockwise ascending order of said associated numerals such that none of said actuable keys are disposed between said parallel rows of said numeric keys, and such that said rows extend along a second dimension of said keypad and are arranged in said first and second dimensions in positions facilitating efficient entry of numeric data;

wherein said keypad contains ten of said numeric keys and each said numeric key is uniquely associated with a respective numeral in the range of zero through nine.

The references relied on by the examiner are:

Deakin	D 145,780	Oct. 22,
1946		
Schmidt	4,522,518	June 11,
1985		

Claims 15, 16, 18 through 30, 34 and 35 stand rejected under 35 U.S.C. § 103 as being unpatentable over Schmidt.

Appeal No. 1998-0746  
Application No. 08/511,268

Claims 17 and 31 through 33 stand rejected under 35  
U.S.C.

§ 103 as being unpatentable over Schmidt in view of Deakin.

Reference is made to the brief and the answer for the  
respective positions of the appellant and the examiner.

#### OPINION

The obviousness rejection of claims 15 through 35 is  
reversed.

The examiner states (Answer, page 4) that:

Schmidt discloses in Fig. 4 the claimed plurality of keys with the numerical keys arranged in two parallel rows of five and in clockwise ascending order. The keys are not arranged immediately adjacent to each other because four keys are inserted between the rows. Fig. 2b discloses the keys in a substantially parallel configuration with the keys immediately adjacent to each other. One of ordinary skill in the art at the time of the invention would have recognized that the specific arrangement of the key[s] is based on the particular needs and adaptations for a particular use. It is clear that the concept of placing keys adjacent to each other for ease of use because the keys are related is a well known concept. Further, the arrangement of keys in an ascending clockwise fashion is also known and desirable based on the specific application. Thus, the combination of these two arrangements for specific purposes would have been obvious because the combination of the two arrangements would provide the well known advantages inherent in each configuration.

Appellant argues (Brief, pages 6 and 7) that the examiner is "merely picking and choosing teachings from various prior art embodiments" based on hindsight knowledge gleaned from appellant's invention. We agree. Other than appellant's disclosed and claimed invention, the examiner has not produced any evidence that the skilled artisan would have known to combine the two embodiments in Figures 2b and 4 of Schmidt to arrive at the claimed invention. The numerical keys in Figure 2b of Schmidt are intentionally staggered to fit between the alphabetical keys of the keyboard arrangement (column 8, lines 16 through 21), and the two straight columns of numerical keys in Figure 4 of Schmidt are specifically separated by four numeric-related punctuation keys (column 8, line 54 through column 9, line 2). In Figure 4, the left hand accesses the low numbers (i.e., 1, 2, 3, 4 and 5), and the right hand accesses the high numbers (i.e., 6, 7, 8, 9 and 0) (column 8, lines 64 through 66). The examiner's rationale falls flat on its face because Schmidt staggered the numerical keys in Figure 2b for "ease of use," and Schmidt specifically located the punctuation keys between the numerical keys in Figure 4 for the same reason. Based upon such specific teachings in

Schmidt, neither embodiment can be modified so that the numeric keys are arranged in first and second immediately adjacent straight parallel rows of five keys each in clockwise ascending order so that no other actuable keys are disposed between the parallel rows of numeric keys as claimed. Thus, in the absence of a convincing line of reasoning by the examiner for modifying the two embodiments in Figures 2b and 4 of Schmidt, we agree with the appellant (Brief, page 7) that "the use of such impermissible hindsight is not adequate motivation to arrive at the present invention and . . . the Examiner has improperly combined the two distinct embodiments of Schmidt in order to meet the limitations of the claimed invention." As a result thereof, the obviousness rejection of claims 15, 16, 18 through 30, 34 and 35 is reversed.

Turning next to the obviousness rejection of claims 17 and 31 through 33, appellant argues (Brief, page 16) that:

Deakin discloses a telephone desk stand having numeric keys arranged in two vertical columns in counterclockwise ascending order and placed adjacent to their associated letters. In contrast thereto, the keyboard of Schmidt includes separate alphabet and numeric keypads for entry of alphabet and numeric data. Appellant respectfully submits that it would not be obvious to incorporate the numeric key and letter association of Deakin with a computer

Appeal No. 1998-0746  
Application No. 08/511,268

keyboard such as disclosed by Schmidt, since there would be no motivation for doing so.

We agree. Inasmuch as hindsight can not be a motivating factor for combining the teachings of Deakin with those of Schmidt, we agree with appellant (Brief, pages 18 and 19) that "the Examiner has failed to establish a *prima facie* case of obviousness." In summary, the obviousness rejection of claims 17 and 31 through 33 is reversed.

DECISION

The decision of the examiner rejecting claims 15 through 35 under 35 U.S.C. § 103 is reversed.

REVERSED

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
PARSHOTAM S. LALL	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	

Appeal No. 1998-0746  
Application No. 08/511,268

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)  
ANITA PELLMAN GROSS )  
Administrative Patent Judge )

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Appeal No. 1998-0746  
Application No. 08/511,268

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***Leticia***

Appeal No. 1998-0746

Application No. 08/511,268

APJ HAIRSTON

APJ GROSS

APJ LALL

DECISION: REVERSED

Send Reference(s): Yes No  
or Translation (s)

Panel Change: Yes No

Index Sheet-2901 Rejection(s):

Prepared: December 8, 2000

Draft                  Final

3 MEM. CONF.    Y                  N

OB/HD                  GAU

PALM / ACTS 2 / BOOK

DISK (FOIA) / REPORT